

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Eberhard Klein et al.
Serial No. : 10/502,430
Filing Date : July 22, 2004
PCT No. : PCT/DE02/03408
For : METHOD AND DEVICE AS WELL AS COMPUTER
PROGRAM FOR CONTROLLING AN INTERNAL
COMBUSTION ENGINE
Examiner : to be assigned
Art Unit : to be assigned
Confirmation No. : 8129

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**ATTENTION: OFFICE OF PCT LEGAL
ADMINISTRATION**

RENEWED PETITION TO WITHDRAW HOLDING OF ABANDONMENT

SIR:

This "RENEWED PETITION" is in response to the "Decision on Petition under 37 C.F.R. 1.181" mailed on November 21, 2006 (hereinafter the "Decision"), which "Decision" maintained the holding of abandonment contained in the Notice of Abandonment mailed on August 21, 2006. Applicants hereby petition to have the holding of abandonment of the above-identified patent application withdrawn.

The following statements were contained in the "Decision":

On 21 August 2006, the Office mailed Notification of Abandonment . . . indicating that the application went abandoned for failure to timely reply to the Notification of Missing Requirements.

On 15 September 2006, applicants sent a copy of figures 4 and 5 with Response to Notification of Defective Response, dated 21 April 2005. The cover letter was signed by someone not registered to practice before the Office and was accompanied by a postcard receipt.

Applicants were previously informed that the text of figure 4 was not properly translated. A timely response to that Notification is not of record and the application is abandoned.

Further, the response dated 21 April 2005 would not have been sufficient to avoid abandonment. Applicants were requested to provide a translation of figure 4. Instead, applicants translated figure 4 and provided a new translation of figure 5, so that it no longer tracked with the description.

A proper response is either a new translation of the entire application and drawings removing the German language abbreviations or **the submission of a translation of figure 4 and a return to the original translation of figure 5.**

With respect to the statement in the "Decision" that "[a] timely response to that Notification [of Defective Response] is not of record," Applicants note that a formal "Petition to Withdraw Holding of Abandonment" mailed on September 21, 2006 included copies of the "Response to Notification of Defective Response" mailed on April 21, 2005, the English language translation of the text of Figure 4, and the postcard bearing the PTO acknowledgment stamp dated April 21, 2005. Accordingly, the PTO did receive the "Response to Notification of Defective Response" mailed on April 21, 2005, which "Response" was timely filed (within one month of March 21, 2005), and this "Response" should have been of record.

Independent of the above, to the extent the "Decision" indicates that the "response dated 21 April 2005 would not have been sufficient to avoid abandonment," since "Applicants were requested to provide a translation of figure 4," but instead "applicants translated figure 4 and provided a new translation of figure 5." The Office's own statement in the "Decision" indicates that Applicants did comply with the request, i.e., "Applicants were requested to provide a translation of figure 4," and Applicants clearly "translated figure 4." The fact that Applicants additionally provided a new translation of figure 5 which may have created inconsistencies in the application does not negate the fact that Applicants fully complied with the request of the Office that Applicants "provide a translation of figure 4." Since the Response dated April 21, 2005 should have been considered timely and fully

responsive to the "Notification of Defective Response," the Response should have been at least sufficient to avoid abandonment. To the extent any inconsistencies were created by the new translation of figure 5 submitted on April 21, 2005, Applicants should have been afforded an opportunity to correct the inconsistencies (which opportunity is believed to be currently extended to Applicants in the "Decision"), without the holding of abandonment.

In response to the statement in the "Decision" that "[a] proper response is . . . the submission of a translation of figure 4 and a return to the original translation of figure 5," Applicants are enclosing a drawing sheet containing a translation of Figure 4 and the original translation of Figure 5.

As a courtesy to the Office, copies of the formal "Petition to Withdraw Holding of Abandonment" (mailed on September 21, 2006), "Response to Notification of Defective Response" (mailed on April 21, 2005), and the postcard bearing the PTO acknowledgment stamp dated April 21, 2005 are enclosed.

In view of the foregoing, it is respectfully requested that the holding of abandonment of the present application be withdrawn.

Although no fee is believed to be required in connection with this matter, if any fee is required, the Commissioner is authorized to charge **Deposit Account of Kenyon & Kenyon LLP, Deposit Account No. 11-0600**. A copy of this petition is enclosed for that purpose.

Respectfully submitted,
KENYON & KENYON LLP

 (R. No. 36,197)

Date 1/18/07

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